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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 130722645-4769-02]

RIN 0648-BD53

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Eastern Pacific Ocean, Whale Shark Conservation Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Tuna Conventions Act to implement a resolution of the Inter-American Tropical Tuna Commission (IATTC) intended to conserve whale sharks (Rhincodon typus) in the Eastern Pacific Ocean (EPO). This final rule would prohibit setting a purse seine net on whale sharks, and would require certain measures to protect whale sharks in the event that a whale shark is encircled in a purse seine net. This rulemaking is necessary for the United States to satisfy its obligations as a member of the IATTC.

DATES: This final rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Chris Fanning, NMFS West Coast Region (see address above) and by e-mail to OIRA_Submission@omb.eop.gov. Copies of the Regulatory Impact Review (RIR) and other supporting documents are available via the Federal e-Rulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2013-0118 or contact with the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Regional Office, 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115-0070, or RegionalAdministrator.WCRHMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Chris Fanning, NMFS, 562-980-4198 or Heidi Taylor NMFS, 562-980-4039.

SUPPLEMENTARY INFORMATION:

Background on the Proposed and Final Rulemaking

On June 9, 2014, NMFS published a proposed rule in the Federal Register (79 FR 32903) that would revise and add to regulations at 50 CFR part 300, subpart C. The purpose of the proposed rule was to implement whale shark conservation measures of the IATTC Resolution on Collection and Analysis of Data on Fish-Aggregating Devices (C-13-04). It was available for public comment through June 30, 2014. One comment was received in support of the proposed conservation and management measures. Additionally, in response to internal NOAA comments, the phrase "as may be further specified by NMFS" was added to the paragraph to clarify that the public may be directed to submit the report on a specific part of the form chosen to be used to fulfill the requirement (e.g. the South Pacific Regional Purse Seine Logsheet). The intent of this language is to allow flexibility for the whale shark interaction reporting obligation using one of multiple approved reporting forms, including the South Pacific Regional Purse Seine Logsheet for trips originating in the western and central Pacific Ocean, and the Seiner Fishing Record and Bridge Log for trips originating in the IATTC Convention Area.

This final rule is implemented under authority of the Tuna Conventions Act (16 U.S.C. 951-961), which authorizes the Secretary of Commerce, with approval by the Secretary of State, to promulgate such regulations as may be necessary to carry out the obligations of the United States as a member of the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), including the decisions of the IATTC. The authority to promulgate regulations has been delegated to NMFS.

The proposed rule included background information on the Convention and the IATTC, the international obligations of the United States under the Convention, and the basis for the proposed regulations. Therefore, this information is not repeated here.

Whale Shark Conservation Measures

This final rule implements the conservation measures for whale sharks contained in Resolution C-13-04. The regulations would apply to owners and operators of U.S. purse seine vessels while commercially fishing for tuna in the Convention Area. This final rule contains three specific provisions. The first prohibits the setting of any purse seine on a school of tuna associated with a live whale shark. In the event that a whale shark is encircled by a purse seine net, the second and third provisions require that purse seine vessel operators take all reasonable steps to ensure the safe release of the shark and report the incident to the relevant governmental authority, including the number of individual whale sharks, details of how and why the encirclement happened, where it occurred, steps taken to ensure safe release, and an assessment of the life status of the whale shark upon release (including whether the animal was released alive, but subsequently died).

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a Final Regulatory Flexibility Analysis was not required and none was prepared.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which has been approved by the Office of Management and Budget (OMB) under control numbers 0648-0387 and 0648-0218. Public reporting burden for whale shark interaction reporting is estimated to average ten minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data

collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: September 15, 2014

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart C is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 et seq.

2. In § 300.22, paragraph (a) is redesignated as paragraph (a)(1), and paragraph (a) heading and paragraph (a)(2) are added as follows:

§ 300.22 Eastern Pacific fisheries recordkeeping and written reports.

(a) Logbooks.

(1) * * *

(2) Whale shark encirclement reporting. The owner and operator of a purse seine fishing vessel of the United States that encircles a whale shark (*Rhincodon typus*) while commercially fishing in the Convention Area must ensure that the incident is recorded on the log that is required by this paragraph (a). The log must include the following information: the number of individual whale sharks with which the vessel interacted, details of how and why the encirclement happened, where it occurred, steps taken to ensure safe release, and an assessment of the life status of the whale shark upon release (including whether the animal was released alive, but subsequently died), as may be further specified by NMFS.

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3. In § 300.24, paragraphs (v), (w), and (x) are added to read as follows:

§ 300.24 Prohibitions.

* * * * *

(v) Fail to maintain, submit, or ensure submission of a log that includes all the information required in § 300.22(a).

(w) Set or attempt to set a purse seine on or around a whale shark (*Rhincodon typus*) in contravention of § 300.25(e)(5).

(x) Fail to release a whale shark encircled in a purse seine net of a fishing vessel as required in § 300.25(e)(6)

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4. In § 300.25, paragraphs (e)(5) and (e)(6) are added to read as follows:

§ 300.25 Eastern Pacific fisheries management.

* * * * *

(e) * * *

(5) Owners, operators, and crew of fishing vessels of the United States commercially fishing for tuna in the Convention Area may not set or attempt to set a purse seine on or around a whale shark (Rhincodon typus) if the animal is sighted prior to the commencement of the set or the attempted set.

(6) The crew, operator, and owner of a fishing vessel of the United States commercially fishing for tuna in the Convention Area must release as soon as possible, any whale shark that is encircled in a purse seine net, and must ensure that all reasonable steps are taken to ensure its safe release.

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